

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 29

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO TAXATION OF PERSONAL PROPERTY; AMENDING SECTION 63-602KK, IDAHO CODE, TO REVISE THE FISCAL YEAR THAT IS USED TO CALCULATE WHEN THE EXEMPTION TAKES EFFECT AND TO PROVIDE ADDITIONAL PROCEDURES FOR APPLICATION FOR THE EXEMPTION AND RECOVERY OF THE EXEMPTION THAT WAS IMPROPERLY CLAIMED OR APPROVED; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-602KK, Idaho Code, be, and the same is hereby amended to read as follows:

63-602KK. PROPERTY EXEMPT FROM TAXATION – CERTAIN PERSONAL PROPERTY. (1) On and after January 1, 2009, subject to subsection (2) of this section, each taxpayer's personal property, located in the county, which is not otherwise exempt and which is not operating property, shall be exempt to the extent of one hundred thousand dollars (\$100,000). For the purposes of this section, a taxpayer includes two (2) or more individuals using the property in a common enterprise or a related group of two (2) or more organizations when the individuals or organizations are within a relationship described in section 267 of the Internal Revenue Code, as defined in section 63-3004, Idaho Code.

(2) This section shall not take effect on January 1, 2009, if on September 1, 2008, the state controller certifies that the receipts to the general fund for the fiscal year ending June 30, 2008, have not exceeded receipts to the general fund from the previous fiscal year by five percent (5%) or more. This section shall take effect on the first year when the state controller certifies to the state tax commission that receipts to the general fund for the fiscal year just ended have exceeded the receipts to the general fund during the ~~previous~~ fiscal year 2008 by five percent (5%) or more.

(3) No later than the third Monday of November of each year, the county clerk of each county shall certify to the state tax commission the amount of exemption from property taxes under subsection (1) of this section, in that county for that year. The certification shall identify the property receiving tax reductions, the value of the property, the property's location, the amount of the tax levy applicable to personal property in the location, and the tax before and after the exemption allowed in subsection (1) of this section. The certification shall be in the form prescribed by the state tax commission and shall include such additional information as the commission may require by rule as needed to implement the purpose of this section. The certification shall be reviewed and if necessary, corrected by the state tax commission.

(4) (a) Subject to the limitations of this section, the state tax commission shall reimburse from the amount appropriated for personal property tax replacement in section 63-3638, Idaho Code, the county treasurer of each county for the reduction on the certification

provided in subsection (3) of this section. The county treasurer shall reimburse from the amount received to each taxing district within the county an amount in proportion to the amount of reduction shown on the certification in subsection (3) of this section as corrected. The amount that would otherwise be attributable to tax revenues derived from tax levies on taxable personal property within an existing revenue allocation area as defined in section 50-2903(15), Idaho Code, on or before January 1, 2009, shall be paid directly by the county treasurer to such public body or agency entitled therein in accordance with the formula for such distribution set forth in section 50-2908, Idaho Code.

(b) The state tax commission shall pay one-half (1/2) of the reimbursement provided in this section no later than December 20 of each year, and the second one-half (1/2) shall be paid by no later than June 20 of the following year. The money received by the county tax collector under the provisions of this section may be considered by counties and other taxing districts and budgeted against at the same time, and in the same manner, and in the same year as revenues from taxation. The total amount paid to the county treasurers shall not exceed the amount certified to the state tax commission under subsection (3) of this section.

(c) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received from distributions pursuant to section 63-3638, Idaho Code, as property tax replacement for the taxable value of property exempt from taxation pursuant to this section shall be treated as property tax revenues.

(5) Nothing contained in this section shall affect the taxation of forest lands or forest products pursuant to chapter 17, title 63, Idaho Code, or the taxation of the net profits of mines pursuant to chapter 28, title 63, Idaho Code.

(6) A taxpayer need only make application for the exemption in this section once, as long as all of the following conditions are met:

(a) The taxpayer has received the exemption during the previous year as a result of him making a valid application as defined in this section.

(b) The amount of the exemption allowed by this section is more than the maximum value of personal property owned by the taxpayer.

(c) The taxpayer has not made purchases of personal property that would cause the aggregate value of the personal property owned by the taxpayer to exceed the maximum amount allowed as an exemption by this section.

(d) For every year the taxpayer claims the exemption, he shall sign an affidavit on a form provided by the assessor, reciting the averments set forth in this section. A false claim set in an affidavit shall subject the taxpayer to a fine not in excess of ten thousand dollars (\$10,000) in addition to other penalties set forth in this chapter.

(7) Recovery of property tax exemptions allowed by this section but improperly claimed or approved:

(a) Upon discovery of evidence, facts or circumstances indicating any exemption allowed by this section was improperly claimed or approved, the county assessor shall decide whether the exemption claimed should have been allowed and if not, notify the taxpayer in writing, assess a recovery of property tax and notify the county treasurer of this assessment. If the county assessor determines that an exemption was improperly approved as a result of county error, the county assessor shall present the discovered evidence, facts or circumstances from the improperly approved exemption, to the board of

1 county commissioners, at which time the board may waive a recovery of the property tax
2 and notify such taxpayer in writing.

3 (b) When information indicating that an improper claim for the exemption allowed
4 by this section is discovered by the state tax commission, the state tax commission
5 may disclose this information to the appropriate county assessor, board of county
6 commissioners and county treasurer. Information disclosed to county officials by the
7 state tax commission under this subsection may be used to decide the validity of any
8 entitlement to the exemption provided in this section and is not otherwise subject to
9 public disclosure pursuant to chapter 3, title 9, Idaho Code.

10 (c) The assessment and collection of the recovery of property tax must begin within
11 the seven (7) year period beginning on the date the assessment notice reflecting the
12 improperly claimed or approved exemption was required to be mailed to the taxpayer.

13 (d) The taxpayer may appeal to the board of county commissioners the decision by the
14 county assessor to assess the recovery of property tax within thirty (30) days of the date
15 the county assessor sent the notice to the taxpayer pursuant to this section. The board
16 may waive the collection of all or part of any costs, late charges and interest, in order to
17 facilitate the collection of the recovery of the property tax, except in the case of fraud.

18 (e) For purposes of calculating the tax, the amount of the recovered property tax shall be
19 for each year the exemption allowed by this section was improperly claimed or approved,
20 up to a maximum of seven (7) years. The amount of the recovery of property tax shall be
21 calculated using the product of the amount of exempted value for each year multiplied by
22 the levy for that year plus costs, late charges and interest for each year at the rates equal
23 to those provided for delinquent property taxes during that year. In cases of fraud, the
24 fine set forth in subsection (6)(d) shall be assessed for each annual affidavit filed.

25 (f) Any recovery of property tax shall be due and payable no later than the date provided
26 for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges
27 and interest, beginning the first day of January in the year following the year the county
28 assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the
29 current rate provided for property taxes.

30 (g) Recovered property taxes shall be billed, collected and distributed in the same
31 manner as property taxes, except each taxing district or unit shall be notified of the
32 amount of any recovered property taxes included in any distribution.

33 (h) Thirty (30) days after the taxpayer is notified, as provided in subsection (7)(a) of this
34 section, the assessor shall record a notice of intent to attach a lien. Upon the payment
35 in full of such recovered property taxes prior to the attachment of the lien as provided
36 in subsection (7)(i) of this section, or upon the successful appeal by the taxpayer, the
37 county assessor shall record a rescission of the intent to attach a lien within seven (7)
38 business days of receiving such payment or within seven (7) business days of the county
39 commissioners' decision granting the appeal. If the real property is sold to a bona fide
40 purchaser for value, prior to the recording of the notice of the intent to attach a lien, the
41 county assessor and treasurer shall cease the recovery of such unpaid recovered property
42 tax.

43 (i) Any unpaid recovered property taxes shall become a lien upon the taxpayer's personal
44 property in the same manner as provided for property taxes in section 63-206, Idaho
45 Code, except such lien shall attach as of the first day of January in the year following the
46 year the county assessor sent the notice to the taxpayer pursuant to this section.

1 (j) For purposes of the limitation provided by section 63-802, Idaho Code, moneys
2 received pursuant to this subsection as recovery of property tax shall be treated as
3 property tax revenue.

4 SECTION 2. An emergency existing therefor, which emergency is hereby declared to
5 exist, this act shall be in full force and effect on and after its passage and approval, and
6 retroactively to January 1, 2009.